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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 **JOSHUA ASSIFF,**

12 **Plaintiff,**

13 **v.**

14 **COUNTY OF LOS ANGELES;**
15 **SHERIFF DEPUTY BADGE**
16 **NUMBER 404532;**
17 **And DOES 1 through 10,**

18 **Defendants.**

Case No. 2:22-cv-05367 RGK (MAAx)

**DECLARATION OF THOMAS M.
FERLAUTO IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

DATE: June 26, 2023

TIME: 9:00 a.m.

COURTROOM: 850

Action Filed: August 3, 2022

Pretrial Conference: July 10, 2023

Trial Date: July 25, 2023

Assigned to: Hon. R. Gary Klausner,
District Judge, Courtroom 850

24
25 I, Thomas M. Ferlauto, declare as follows:

26 1. I am an attorney licensed to practice law in all of the courts in the State
27 of California, and I am Plaintiff's counsel of record herein. Consequently, I have
28 personal knowledge of the following:

1 2. On April 14, 2023, I attended the deposition of Plaintiff Joshua Assiff.
2 Attached hereto as **Exhibit 1** are true and accurate excerpts of Plaintiff's deposition
3 transcript.

4 3. On May 30, 2023, I attended the deposition of Defendant Travis Kelly
5 ("Defendant Kelly"). As of the date of the filing of this opposition, the deposition
6 transcript for Defendant Kelly has not been prepared. Plaintiff will submit to the
7 Court the applicable portions of Defendant Kelly's deposition transcript as soon as it
8 is prepared. However, at the time of the filing this opposition, in lieu of the official
9 transcript, Defendant Kelly testified in sum and substance as follows:

10 a. Defendant Kelly in his deposition conceded that after he
11 requested Plaintiff's driver's license, Plaintiff was in the process of producing his
12 driver's licenses when Defendant Kelly, not Plaintiff, re-engaged Plaintiff in the
13 debate over the color of the light.

14 b. Defendant Kelly in his deposition conceded that the he did not
15 see Plaintiff's kick him. His motorcycle pants were thickly padded, and it may have
16 been Plaintiff's knee with which he came into contact.

17 c. Defendant Kelly in his deposition conceded that he could not see
18 Plaintiff punch Deputy Clark in the chest on the video and had trouble locating where
19 in the video it allegedly occurred.

20 d. In the County's Use of Force Report, the County claimed that
21 Defendant Kelly had successfully used de-escalation techniques with an
22 uncooperative driver just 24 minutes prior of the incident involving Plaintiff. In his
23 deposition, Defendant Kelly denied that any such incident took place.

24 e. In deposition, while discussing the June 2014 incident where
25 Defendant Kelly drove off from a traffic stop when he was pulled over by the LAPD,
26 Defendant Kelly confessed that he did not like working for an African American
27 captain and only signed the performance log entry (COLA-40) because his signature
28 was coerced from him. Allegedly, the African American captain threatened to

1 withhold Defendant Kelly's promotion to sergeant unless he signed the performance
2 log entry. If Defendant Kelly is to be believed, he was required to admit to rude,
3 unprofessional, discrediting, officious, and overbearing (if not illegal) conduct to
4 secure his promotion to sergeant. Defendant Kelly also admitted to signing the
5 performance log entry so he could stop working underneath the African American
6 captain, whom he disliked.

7 f. In April of 2017, Defendant Kelly was suspended for four days in
8 connection with a use of force incident against an Hispanic inmate in July of 2015,
9 Defendant Kelly in his deposition admitted that he never served the 4 day suspension.

10 4. Attached hereto as **Exhibit 2** is a true and accurate excerpt from the
11 Supervisor's Report on Use of Force produced by the County in this action as part of
12 its initial disclosure obligation. This document was designated as CONFIDENTIAL
13 by the County pursuant to a stipulated protective order.

14 5. Attached hereto as **Exhibit 3** is a true and accurate copy of Defendant
15 the County of Los Angeles Sheriff's Department's Responses to Plaintiff's Request
16 For Documents, Set Two.

17 6. Attached hereto as **Exhibit 4** is a true and accurate (though redacted)
18 portion of Defendant Kelly's personnel file. This document was produced in this
19 action by the County in response to discovery requests. This document was
20 designated as CONFIDENTIAL by the County pursuant to a stipulated protective
21 order.

22 7. Attached hereto as **Exhibit 5** is a true and accurate (though redacted)
23 portion of Defendant Kelly's personnel file. This document was produced in this
24 action by the County in response to discovery requests. This document was
25 designated as CONFIDENTIAL by the County pursuant to a stipulated protective
26 order.

27 8. Attached hereto as **Exhibit 6** is a true and accurate (though redacted)
28 portion of Defendant Kelly's personnel file. This document was produced in this

1 action by the County in response to discovery requests. This document was
2 designated as CONFIDENTIAL by the County pursuant to a stipulated protective
3 order.

4 9. Attached hereto as **Exhibit 7** is a true and accurate (though redacted)
5 portion of Defendant Kelly's personnel file. This document was produced in this
6 action by the County in response to discovery requests. This document was
7 designated as CONFIDENTIAL by the County pursuant to a stipulated protective
8 order.

9 10. Attached hereto as **Exhibit 8** is a true and accurate (though redacted)
10 portion of Defendant Kelly's personnel file. This document was produced in this
11 action by the County in response to discovery requests. This document was
12 designated as CONFIDENTIAL by the County pursuant to a stipulated protective
13 order.

14 11. Attached hereto as **Exhibit 9** is a true and accurate (though redacted)
15 portion of Defendant Kelly's personnel file. This document was produced in this
16 action by the County in response to discovery requests. This document was
17 designated as CONFIDENTIAL by the County pursuant to a stipulated protective
18 order.

19 12. Attached hereto as **Exhibit 10** is a true and accurate (though redacted)
20 portion of Defendant Kelly's personnel file. This document was produced in this
21 action by the County in response to discovery requests. This document was
22 designated as CONFIDENTIAL by the County pursuant to a stipulated protective
23 order.

24 13. Attached hereto as **Exhibit 11** is a true and accurate (though redacted)
25 portion of Defendant Kelly's personnel file. This document was produced in this
26 action by the County in response to discovery requests. This document was
27 designated as CONFIDENTIAL by the County pursuant to a stipulated protective
28 order.

1 14. Attached hereto as **Exhibit 12** is a true and accurate (though redacted)
2 portion of Defendant Kelly's personnel file. This document was produced in this
3 action by the County in response to discovery requests. This document was
4 designated as CONFIDENTIAL by the County pursuant to a stipulated protective
5 order.

6 15. Attached hereto as **Exhibit 13** is a true and accurate (though redacted)
7 portion of Defendant Kelly's personnel file. This document was produced in this
8 action by the County in response to discovery requests. This document was
9 designated as CONFIDENTIAL by the County pursuant to a stipulated protective
10 order.

11 16. Attached hereto as **Exhibit 14** is a true and accurate copy of the
12 Complaint filed by the United States of America against the County on April 28,
13 2015 in Case No. CV 15-03174. Plaintiff respectfully requests the Court to take
14 judicial notice of this filing under Federal Rules of Evidence Rule 201.

15 17. Attached hereto as **Exhibit 15** is a true and accurate copy of the
16 Settlement Agreement between the United States of America and the County filed on
17 April 28, 2015 in Case No. CV 15-03174. Plaintiff respectfully requests the Court
18 to take judicial notice of this filing under Federal Rules of Evidence Rule 201.

19 18. Attached hereto as **Exhibit 16** is a true and accurate copy of An Analysis
20 of Racial/Ethnic Disparities in Stops by Los Angeles County Sheriff's Deputies in
21 the Antelope Valley Dated September 2020. This report was personally downloaded
22 by me from the Los Angeles County Sheriff's Department website on December 22,
23 2022. Plaintiff respectfully requests the Court to take judicial notice of this filing
24 under Federal Rules of Evidence Rule 201.

25 19. Plaintiff requests the Court deny Defendants' motion for partial
26 summary judgment under Rules of Federal Procedure Rule 56(d) or in the alternative
27 defer ruling on the motion to permit time for Plaintiff to conduct discovery, take
28 depositions, and obtain declarations.

1 20. Plaintiff has complied with all of his discovery obligations. Plaintiff
2 appeared for his deposition and gave testimony on April 14, 2023. Plaintiff made his
3 expert witness disclosure -- including expert witness report -- in a timely fashion on
4 May 10, 2023.

5 21. Defendants have not complied with their discovery obligations.

6 22. The discovery cut-off in this action was and is May 10, 2023.

7 23. On March 31, 2023, Plaintiff properly noticed Defendant Kelly's
8 deposition for April 25, 2023. Plaintiff offered to reset the deposition for any
9 mutually agreeable date prior to the discovery cut-off.

10 24. On March 31, 2023, Plaintiff properly noticed the deposition of the
11 persons most knowledgeable at the Defendant County of Los Angeles about 9 certain
12 relevant topics for April 26, 2023. The 9 topics were specified as follows: (1) The
13 traffic stop policies and procedures for the Los Angeles County Sheriff's Department
14 in effect on September 24, 2021. (2) The de-escalation policies and procedures for
15 the Los Angeles County Sheriff's Department in effect on September 24, 2021.
16 (3) The use of force policies and procedures for the Los Angeles County Sheriff's
17 Department in effect on September 24, 2021. (4) The education and training of
18 Defendant Kelly in the traffic stop policies and procedures for the Los Angeles
19 County Sheriff's Department in effect on September 24, 2021. (5) The education and
20 training of Defendant Kelly in the de-escalation policies and procedures for the Los
21 Angeles County Sheriff's Department in effect on September 24, 2021. (6) The
22 education and training of Defendant Kelly in the use of force policies and procedures
23 for the Los Angeles County Sheriff's Department in effect on September 24, 2021.
24 (7) The supervision of Defendant Kelly on September 24, 2021. (8) The investigation
25 into Defendant Kelly's conduct in the incident that is the subject matter of this
26 litigation and that took place on September 24, 2021. (9) The efforts by the County
27 of Los Angeles and the Los Angeles Sheriff's Department to comply with the
28

1 Settlement Agreement entered in USDC Case No. CV-15-03174. Plaintiff offered to
2 reset the deposition for any mutually agreeable date prior to the discovery cut-off.

3 25. Defendants failed to offer alternative deposition dates prior to the
4 discovery cut-off for Defendant Kelly, and Defendant Kelly failed to appear for his
5 scheduled deposition on April 25, 2023.

6 26. Defendants failed to offer alternative deposition dates prior to the
7 discovery cut-off for Defendant the County of Los Angeles, and Defendant the
8 County of Los Angeles failed to appear for its scheduled deposition on April 26, 2023.

9 27. On May 10, 2023, Defendants brought an ex parte application seeking
10 to continue the trial date and other pre-trial deadlines. Plaintiff filed a qualified
11 opposition to Defendants' ex parte application. Plaintiff opposed the application to
12 continue dates, but only if the Court was inclined to grant issue or evidence sanctions
13 against the Defendants for their failure to appear for their depositions. However, if
14 the Court was not inclined to grant issue or evidence sanctions, Plaintiff did not
15 oppose the application and agreed that a continuance was necessary for Plaintiff to
16 complete the discovery that Defendants wrongfully refused to provide.

17 28. On May 12, 2023, the Court denied Defendants' motion to continue trial
18 and other pre-trial deadlines, but permitted the parties to agree to conduct the
19 depositions of the Defendants (who failed to appear at their noticed depositions) after
20 the discovery cut-off.


21 29. In response to the Court's order, Defendants offered two dates for the
22 deposition of Defendant Kelly, but then withdrew one of them. Thus, Defendants
23 only offered one available date for Defendant Kelly. Plaintiff accepted that one date,
24 and the deposition of Defendant Kelly was taken May 30, 2023. However, due to
25 the Court Reporter's calendar and work flow, the deposition transcript will not be
26 available until after June 5, 2023 – the date that the opposition to Defendants' motion
27 for summary judgment is due.
28

1 30. For the deposition of the persons most knowledgeable on 9 topics at
2 Defendant the County of Los Angeles, Defendants have only offered two partial dates
3 for two witnesses on two topics. Defendants offered a partial date with limited time
4 for questioning for one witness on one topic and a partial date with limited time for
5 questioning (during my son's high school graduation ceremony) for another topic.
6 Defendants have not offered a workable mutually agreeable date for the deposition
7 of Defendant the County of Los Angeles. Thus, the deposition will not be conducted
8 and deposition transcript of this deposition will not be available until after June 5,
9 2023 – the date that the opposition to Defendants' motion for summary judgment is
10 due.

11 31. On May 24, 2023, Defendants filed this motion for partial summary
12 judgement set for hearing on June 26, 2023, with an opposition deadline of June 5,
13 2023. To oppose this motion on the merits, Plaintiff will require the deposition
14 transcript of both Defendant Kelly and Defendant the County of Los Angeles.
15 However, the transcript of Kelly's deposition will not be prepared, and the deposition
16 of the County of Los Angeles will not have even taken place yet. Since Plaintiff's
17 expert needs this discovery to complete his report, even his opinions will not be
18 complete.

19 32. Having reviewed the motion, I can state that the depositions of
20 Defendants Kelly and the County of Los Angeles and the updated expert report of
21 Jeffrey J. Nobel will be crucial to opposing the motion and establishing the existence
22 of factual issues that need to be tried. The transcript of the deposition of Defendant
23 Kelly is needed to properly present the evidence set forth in paragraph 4, above. The
24 transcript of deposition of the County of Los Angeles is needed to more thoroughly
25 present the evidence set forth in paragraphs 4 and 6-18, above. The updated expert
26 report of Jeffrey J. Nobel (taking in consideration the depositions of Defendants
27 Kelly and the County of Los Angeles) is necessary to address the claim against the
28 County of Los Angeles.

1 I declare under penalty of perjury under the laws of the State of California and
2 the United States of America that the foregoing is true and correct. Executed this
3 5th day of June , 2023 in Orange County, California.

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8 THOMAS M. FERLAUTO
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